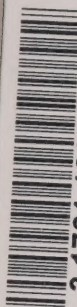


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Ontario Human Rights Commission Guidelines For Internal Human Rights Complaint Resolution Procedures

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 **Ontario**
Human Rights Commission

PLEASE NOTE

These guidelines contain the Commission's interpretation of the Code provisions as they relate to internal human rights complaint resolution procedures. They are subject to interpretation by boards of inquiry and the courts, and should be read in conjunction with the specific provisions of the Code. Any questions regarding this policy or the Code generally should be directed to the staff of the Ontario Human Rights Commission.

GUIDELINES FOR INTERNAL HUMAN RIGHTS COMPLAINT RESOLUTION PROCEDURES

INTRODUCTION

In response to the changing nature of our society, many employers, unions, and other organizations and institutions are developing human rights initiatives in order to actively address equality issues in workplaces and other settings. The Ontario Human Rights Commission welcomes this trend.

A sound human rights program will be based on a strong policy, clearly communicated to all, and will include a comprehensive education program.

It may also include an internal procedure for investigating and attempting to resolve specific complaints of unequal treatment.

The Ontario Human Rights Commission is often asked to advise and consult when such procedures are being established. It is in response to such requests that these guidelines are being issued.

Since most of the requests referred to above come from an employment setting, much of what is said here is intended to respond to concerns related to the workplace. However, the principles expressed here are also applicable to other settings covered by the Human Rights Code, including circumstances where a service or housing is provided.

It must be emphasized at the outset that the existence of an employer sponsored internal procedure does not and cannot preclude individuals from filing a complaint with the Commission or pursuing any other rights as they may have, for example, lodging a grievance under a collective agreement.

CODE PROTECTIONS

Under Ontario's Human Rights Code, a person has the right to equal treatment in a number of social areas:

services
accommodation
employment
contracts
membership in trade unions and vocational associations

on a list of prohibited grounds:

race
ancestry
place of origin
colour
ethnic origin
citizenship
creed
sex
sexual orientation
age

record of offences (in employment)
marital status
family status
receipt of public assistance (in
accommodation)
handicap.

This law is enforced by the Ontario Human Rights Commission through a system of complaint investigation, conciliation, and where necessary and appropriate, referral to independent boards of inquiry empowered to render binding decisions. Where a contravention of the *Code* is established, remedies can be substantial - they can include offers of employment or reinstatement, monetary compensation for lost wages and other damages including mental anguish, accommodation of the needs of a person with a disability and educational programs or other measures to prevent future occurrences.

OTHER PROCESSES

Consistent with the public policy expressed in the Human Rights Code, employers have a responsibility to provide a working environment free from discrimination and harassment and to deal effectively with any incidents or situations that come to their attention in which such treatment is alleged. In order to discharge this responsibility, some employers have set up internal or employer sponsored complaint resolution procedures.

In establishing such procedures it should be kept in mind that by their very nature, most internal procedures cannot embody the same

legal protections and guarantees as are provided to the parties under the Human Rights Code. Therefore, there may be situations which, because of their controversial nature or complexity, require the intervention of an external agency such as the Commission, in order to achieve an appropriate resolution of the issues.

For those cases which appear appropriate for resolution through internal processes, regardless of how simple or straightforward they may appear, access to up-to-date human rights expertise is critical. The need for such expertise in the investigation and resolution of all complaints cannot be overemphasized. Those programs which have run into difficulty have done so as a result of a lack of ongoing training for those responsible for implementing the process.

The following guidelines are designed to help employers who establish internal complaint resolution mechanisms to make those procedures as fair as possible, safeguard the rights of those who choose to use them, and promote the general goal of creating discrimination and harassment free workplaces.

While they do not constitute an endorsement of any particular internal procedure, the guidelines are indicative of the minimum standards the Commission feels are appropriate for such processes. Clearly, the size of the work force and other factors will determine whether any particular employer wishes to set up an internal procedure, and if so, how complex and formal it will be. However, the standards set out below should be reflected in any program regardless of size or complexity.

GUIDELINES FOR INTERNAL COMPLAINT RESOLUTION PROCESSES

- o There should be in place a clear written policy stating that discrimination, harassment, and other types of unwelcome comments or conduct are contrary to the policy of the organization, as well as against the law, and that actions or behaviour contrary to the Human Rights Code will be dealt with seriously, including by the use of disciplinary measures where appropriate. It is recommended that the actual grounds cited in the *Code* be quoted in the policy. All employees should be made aware of the employer's internal policy and complaint procedures. This should be done when the policy is introduced, with new employees at the point of hire, and when any employee assumes management responsibilities.
- o Any complaint procedure should be part of an overall human rights program which includes an educational component available to everyone.
- o The human rights program should be agreed to by a union where one exists. If there is no union, then a Human Rights Committee or similar group of employee representatives should be struck for this purpose.
- o Any person wishing to make an internal complaint should be able to contact someone able to assist them without going through their own manager or involving members of their own Branch or Division.
- o A person making a complaint should always be advised of all other options available, especially the option to file a complaint with the Ontario Human Rights Commission and, where it exists, the option to file a grievance under a collective agreement. The person should be told how to contact the Human Rights Commission, union, or other agency. (Some employers have found it helpful to incorporate an "advisor" (distinct from the "investigator") into their system. The role of the advisor, who maintains strict confidentiality, is not to take action but to provide information and explain options to people with complaints or concerns.)
- o A person making a complaint should be advised of time limits that apply to these other options. Complaints under the Human Rights Code should be filed as soon as possible and in any case within six months. With a grievance under a collective agreement, much shorter time limits (days or weeks) may apply.
- o A person making a complaint should be advised to make and retain for future use, written notes of the events upon which the complaint is based. Include times, dates, locations, names of witnesses. Also collect and retain any relevant documentation.
- o A person making a complaint should be made aware of how the internal procedure works, including time-frame, the type of information they will receive at the end of the investigation, who will investigate, who

will be responsible for making a decision as to what action the employer will take, and what remedies are possible.

- o It should be part of the policy that there will be protection from reprisals against those participating in the process, including complainants, witnesses, advisers, representatives, investigators and decision makers.
- o The parties to a complaint should be entitled to representation if they wish - a union steward for example, or other representative.
- o Those responsible for investigating complaints must be as independent and as far removed from the parties involved as possible. They should report to someone with the authority to make decisions and ensure a settlement is carried out.
- o Investigation of complaints must not be carried out by those who, in other circumstances, play an advocacy or adversarial role on behalf of the employer vis-à-vis employees e.g. in labour relations. Similarly, the investigation should not be conducted by anyone who has any direct influence in the career advancement of either of the parties.
- o Investigators must be sensitive and knowledgeable about human rights in general, and the provisions of the Human Rights Code in particular.

- o Confidentiality must be maintained wherever possible.

- o There should be reasonable time limits on the resolution of a complaint via an internal procedure. In all but exceptional circumstances, investigations should be initiated immediately and concluded within ninety days. This time guideline is based on the average resolution time currently experienced by those with internal mechanisms in place.
- o Where a resolution has not been achieved through the internal procedure, the employee should be advised that they may still exercise their right to have their concerns addressed by the Ontario Human Rights Commission.

THE ROLE OF THE ONTARIO HUMAN RIGHTS COMMISSION VIS-À-VIS INTERNAL COMPLAINT PROCEDURES


While the Human Rights Commission will provide advice and counselling which may assist an individual in using an internal resolution process, it will not require that anyone use an internal procedure before filing a complaint with the Commission. The existence of an internal procedure does not affect a person's right to pursue a complaint under the Human Rights Code. Should a person wish to proceed internally, while safeguarding their rights under the *Code*, they may initiate both actions at the same time.

Should a complaint under the Human Rights Code be filed more than six months after the events upon which it is based, the Commission may be asked by the employer to exercise its discretion under Section 33(1)(d) of the *Code* and not deal with the complaint on the grounds that the delay was not incurred in good faith and/or that substantial prejudice may result from the delay.

In such a situation, the Commission will entertain arguments and decide each case on its merits. However, if the employer has been notified of the matter by means of an internal complaint within 6 months of the occurrence, it is unlikely that the request will meet the test of S.33(1)(d), i.e. it is unlikely that the Commission will decline to deal with the complaint on that ground.

Internal procedures are often promoted on the grounds of speed, i.e. they are faster than going to the Commission. However, not all complaints made to the Commission go through the full investigation, formal conciliation and hearing process. As with grievances under collective agreements, and no doubt with internal complaint procedures, many *Code* complaints are settled by agreement of the parties at an early stage in the process. The Commission is more than willing to explore with the parties to a *Code* complaint the possibilities of early settlement.

Those who require advice on human rights matters can contact Commission staff for informal consultative assistance.



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